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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,709	12/05/2003	Eric Ezra Youngberg	LFF1.PAU.01	9967

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EXAMINER

KING, ANITA M

ART UNIT PAPER NUMBER

3632

DATE MAILED: 10/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/728,709

Applicant(s)

YOUNGBERG, ERIC EZRA

Examiner

Anita M. King

Art Unit

3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 11-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9, 11, 12, 25 and 26 is/are allowed.
- 6) ☒ Claim(s) 1-8 and 13-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 July 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

This is the second office action for application number 10/728,709, Water Heater Security System, filed on December 5, 2003.

Drawings

The drawings were received on July 5, 2005. These drawings are approved.

Cancellation of Claims

Claim 10 has been canceled per applicant's request.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 3, 14, 18, and 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,138,864 to Enochs in view of U.S. Patent 3,894,707 to Heard. Enochs discloses a security system, capable of holding a water heater in a generally fixed relationship with an adjacent wall, the system comprising: at least one strap assembly extendable around at least a portion of a cylindrical object (3); the strap assembly having a first end, a second end, and a flexible configuration; a first wall bracket (26); a second wall bracket (26); the first end of the strap assembly having a fixed relationship with the first wall bracket; wherein the strap assembly includes a first strap (28) having a first end and an opposing third end, and a second strap having a

Art Unit: 3632

second end and an opposing fourth end; and a buckle (31) for attaching the third end of the first strap in a fixed relationship to the fourth end of the second strap.

Enochs discloses the claimed invention except for the limitations of the strap assembly having a woven configuration free of sharp edges; the second end of the strap assembly having an adjustable relationship with the second wall bracket; and the first outer end of and second outer end having adjustable relationships with the first and second wall brackets. Heard teaches a security system for mounting a cylindrical object to an adjacent wall, the system comprising a strap assembly having a first end, a second end, and a woven, flexible configuration free of sharp edges (Col. 3, line 29ff), a first wall bracket (24), a second wall bracket (22 or 50), the first end of the strap assembly having a fixed relationship with the first wall bracket (24, Fig. 1), the second end of the strap assembly having an adjustable relationship with the second wall bracket (22 or 50) to permit movement of the second end of the strap assembly between a first position wherein the strap has a first length between the first wall bracket and the second wall bracket, and a second position wherein the strap has a second length shorter than the first length between the first wall bracket and the second wall bracket, and wherein the first and second ends are adjustable with the first and second wall brackets (Fig. 6).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the material of the strap assembly in Enochs to have been woven and free of sharp edges as taught by Heard for the purpose of providing an alternative and mechanically equivalent means for holding the object.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the system in Enochs to have included the arrangement between the first and second ends of the strap assembly to have been fixed and adjustable in relation to the first and second wall brackets or adjustable in relation to first and second wall brackets for the purpose of accommodating different types and sizes of the cylindrical objects held by system.

Claims 1, 2, 13-16, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,202,977 to Chapman. Chapman discloses a water heater security system (20) adapted to hold a water heater (10) in a generally fixed relationship with and adjacent wall (12), the system comprising: at least one strap assembly extending around at least a portion of the water heater; the strap assembly having a first end, a second end, and a flexible configuration; a first wall bracket (21) attached to the wall on a first side of the water heater; a second wall bracket (21) attached to the wall on a second side of the water heater opposite the first side; the first end of the strap assembly having a fixed relationship with the first wall bracket; the second end of the strap assembly having an adjustable relationship with the second wall bracket to permit movement of the second end of the strap assembly between a first position wherein the strap (30) has a first length between the first wall bracket and the second wall bracket, and a second position wherein the strap has a second length shorter than the first length between the first wall bracket and the second wall bracket: wherein the strap assembly comprises a single strap (30) having the first end and the second end.

Chapman discloses the claimed invention except for the limitation of the strap assembly being woven and free of sharp edges or being constructed of a non-metallic material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the strap assembly in Chapman to have been woven and free of sharp edges or non-metallic for the purpose of providing a strap assembly that will prevent injury to a person accidentally brushing against the strap assembly.

Claims 4, 5, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Enochs combined with Heard and in further view of U.S. Patent 3,967,347 to Bickis, Sr., hereinafter, Bickis. Enochs combined with Heard disclose the claimed invention except for the limitation of the buckle having an adjustable relationship with one of the ends of the straps. Bickis teaches a buckle (1) having an adjustable relationship with a first end (41) of a strap (22) and a second end (42) of the strap. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the buckle in Enochs combined with Heard to have included the adjustable buckle as taught by Bickis for the purpose of providing more adjustability to the securing system in order to accommodate various water heaters having different sizes.

Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Enochs combined with Heard and in further view of U.S. Patent 3,390,436 to Prete, Jr., hereinafter, Prete. Enochs combined with Heard disclose the claimed invention except for the limitation of a buckle having a first portion bent back on a second portion and a

Art Unit: 3632

slide. Prete teaches a buckle (10) having a first portion (17) bent back over a second portion (11) and defining a channel therebetween, a slide (22) engageable by an end of a strap (33) and movable within the channel to form a fixed relationship between the buckle and the end of the strap, wherein the slide includes side flanges (24, 25) to maintain the slide in the channel, and wherein the second portion of the buckle has side flanges (12, 13) to maintain the slide in the channel. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the buckle in Enochs to have included the buckle as taught by Prete for the purpose of providing an alternative, mechanically equivalent buckle for securing the ends of the strap to secure an object to wall surface.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chapman in view of Heard. Chapman discloses the claimed invention except for the limitation of the first end of the strap being adjustable with the first wall bracket. Heard teaches that it is known to have a strap assembly comprising a single strap (70) of flexible material having a first end in adjustable relationship with a first wall bracket (24) and a second end in adjustable relationship with a second wall bracket (50). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the strap assembly in Chapman to have included the arrangement as taught by Heard for the purpose of providing more adjustability to the strap assembly in relation to the wall brackets.

Allowable Subject Matter

Claims 9, 11, 12, 25, and 26 are allowed.

The following is a statement of reasons for the indication of allowable subject matter: the primary reasons for the indication of allowable subject are the limitations of a buckle having an inner portion in a first plane, an outer portion bent back on the inner portion and disposed generally in a second plane parallel to the first plane, the outer portion forming a first sidebar with the inner portion, the first sidebar having a first pair of strap engagement edges, a slide movable within a channel and having a second pair of engagement edges whereby a first strap can be threaded around the slide and cinched tightly to engage the first strap with the first and second pair of strap engagement edges and thereby form the fixed relationship with the buckle, and a bar adapted to engage a second strap, now included in independent claim 9 and in combination with the other elements recited in the claim, which is not found in the prior art of record.

Response to Arguments

Applicant's arguments, see remarks of amendment, filed July 5, 2005, with respect to claims 9, 11, and 12 have been fully considered and are persuasive. The rejection of claims 9, 11, and 12 has been withdrawn.

Applicant's arguments filed July 5, 2005 have been fully considered but they are not persuasive. The rejections advanced against claims 1-8 and 13-24 stands.

In response to applicant's argument that applicant's claimed invention is directed to a security system for water heaters only, a recitation of the intended use of the

claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., metallic straps lead to hazardous conditions) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, both Enochs and Heard disclose holders using straps of different materials for supporting a cylindrical object flushed against a vertical surface. Heard is used to teach the usage of a woven strap. Also, Enochs teaches flexible straps and to make it from a woven material would have been obvious to one of ordinary skill in the art, since woven material inherently has a degree of flexibility.

In response to applicant's argument based upon the age of the references, contentions that the reference patents are old are not impressive absent a showing that the art tried and failed to solve the same problem notwithstanding its presumed knowledge of the references. See *In re Wright*, 569 F.2d 1124, 193 USPQ 332 (CCPA 1977).

In regards to applicant's argument that Chapman does not teach a strap being made of woven material, it is generally known to one of ordinary skill in the art to use straps of different material to perform the same function, i.e., securing a cylindrical object to a vertical surface which is disclosed by Chapman.

Conclusion


THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anita M. King whose telephone number is (571) 272-6817. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on (571) 272-6788. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Anita M. King
Primary Examiner
Art Unit 3632

October 17, 2005